700, 64 S. E. 935. Apart from this, the mere fact that the act committed is a crime would not defeat equity's jurisdiction. *Cranford* v. *Tyrrell*, 128 N. Y. 341, 28 N. E. 514; *Jones* v. *Van Winkle Gin and Machine Works*, 131 Ga. 336, 62 S. E. 236. Nor would the fact that the plaintiff has the right to use force by its executive powers preclude an injunction if irreparable loss would follow from the use of force. *In re Debs*, 158 U. S. 564, 15 Sup. Ct. 900. An injunction in such a case as is presented in the facts would probably be peculiarly effective. In general, however, courts of equity should be extremely reluctant to assume the functions of other branches of the government.

ESTOPPEL — ESTOPPEL IN PAIS — FAILURE TO ACT. — The defendant's name was forged to a telegram purporting to make a contract with the plaintiff. On learning of this, the defendant stated to the plaintiff that he would neither admit nor deny liability on the contract. *Held*, that, even assuming a duty to speak, the defendant is not here estopped to deny the contract, because there was no resultant injury to the plaintiff. *Wiggin* v. *Browning*, 23 Ont. Wkly. Rep. 128 (Divisional Ct.). See NOTES, p. 349.

EVIDENCE — DECLARATIONS CONCERNING MATTERS OF PUBLIC OR GENERAL INTEREST — PRIVATE BOUNDARIES: ADMISSIBILITY OF DECLARATIONS AS PROOF. — In an action of ejectment the rights of the parties depended on a disputed boundary line. The plaintiff offered evidence of what a person, since deceased, who had lived on the land, had said with reference to the location of the line. It did not appear that the declarant had any particular duty or interest in acquiring such information. *Held*, that the evidence is inadmissible. *Smith* v. *Stanley*, 75 S. E. 742 (Va.).

At common law the recognized public or general interest exception to the hearsay rule admitted, to prove boundaries, only declarations as to matters of general reputation in regard to public boundaries. *Queen* v. *Bliss*, 7 A. & E. 550; *Hall* v. *Mayo*, 97 Mass. 416. In some American jurisdictions the courts have made a twofold extension of the exception by admitting hearsay evidence as to private boundaries of particular facts known or acts done by the declarant himself, on the grounds of the necessary lack of other evidence in the early history of American communities. *Martin* v. *Folger*, 15 Cal. 275; *Harriman* v. *Brown*, 8 Leigh (Va.) 697. It has been suggested that the American rule is traceable to the older English rule in regard to private prescription. See 13 HARV. L. REV. 56. The fact that the declarant is in effect an unsworn witness testifying of his own knowledge has led to several clearly defined limitations. The declarant must be dead and have had no motive to misrepresent. *Scarfe* v. *Western North Carolina Land Co.*, 90 Fed. 238. See *Barrett* v. *Kelly*, 131 Ala. 378, 384, 30 So. 824, 826. The rule of *ante litem motam* also applies. *Hamilton* v. *Smith*, 74 Conn. 374, 50 Atl. 884. See 15 HARV. L. REV. 673. The further limitation of the principal case that the declarant must stand in reference to the land so as to have made it his duty or interest to obtain accurate information seems also a reasonable qualification. *Clements* v. *Kyles*, 13 Gratt. (Va.) 468; *Fry* v. *Stowers*, 92 Va. 13, 22 S. E. 500.

FIXTURES — TRADE FIXTURES — WHAT FIXTURES ARE REMOVABLE. — The defendant removed from the front of a store leased from the plaintiff plate-glass windows and marble trimmings which he had attached by screws. The California Code allows removal of a fixture if it "can be effected without injury to the premises, unless the thing has . . . become an integral part of the premises." *Held*, that the plaintiff may recover. *Alden* v. *Mayfield*, 127 Pac. 44 (Cal.).

At common law the primary test of removal of fixtures by a tenant is whether the tenant's intention in installing them is that they are to be permanent or merely for his use while in possession. *Thompson Scenic Ry. Co.* v. *Young*, 90 Md. 278, 44 Atl. 1024; *Menger* v. *Ward*, 28 S. W. 821 (Tex.). But the law, wishing to protect the value of property, will not allow removal where it will injure the realty. *Friedlander* v. *Ryder*, 30 Neb. 783, 47 N. W. 83; *Pond & Hasey Co.* v. *O'Connor*, 70 Mich. 266, 73 N. W. 159. The California code is in effect declaratory of this view of the common law. How the change will affect the fixture is not generally considered in this country if it does not entirely destroy it. *Van Ness* v. *Pacard*, 2 Pet. (U. S.) 137; *Baker* v. *McClurg*, 198 Ill. 28, 64 N. E. 701. Insomuch as the intention of the tenant in every case would seem to be to remove whatever is of any value to him, it seems that the first requirement for removability should be only his intention that the property be used for trade purposes. Just as the law requires that the realty be not injured, so it seems that a further requirement of severability should be that the fixture retain a removable identity. *Whitehead* v. *Bennett*, 27 L. J. Ch. 474; *Collamore* v. *Gillis*, 149 Mass. 578, 22 N. E. 46. This rule more often than any other would preserve property for the benefit of society consistently with justice to the parties. An attempt to determine the value to society in each case would be obviously impracticable. Ornamental fixtures are governed by similar rules. See *Hayford* v. *Wentworth*, 97 Me. 347, 353, 54 Atl. 940, 942.

GARNISHMENT — PERSONS SUBJECT TO GARNISHMENT — INSURANCE COMPANIES: DISTINCTION BETWEEN INDEMNITY INSURANCE AND INSURANCE AGAINST LIABILITY. — A policy insuring the defendant against loss from the operation of his automobile provided that no action should lie against the company to recover for any loss unless brought by the assured for loss actually paid in money by him after trial of the issue. The plaintiff obtained a verdict against the assured in a suit defended by the insurance company for damages for injuries caused by the defendant's automobile. The plaintiff then sought to garnish the proceeds of the policy in the company's hands. *Held*, that he can do so. *Patterson* v. *Adan*, 138 N. W. 281 (Minn.).

Cases on garnishment make a decisive distinction between contracts of indemnity against loss and contracts insuring against liability. *Finley* v. *United States Casualty Co.*, 113 Tenn. 592, 598, 83 S. W. 2, 3; *Stephens* v. *Pennsylvania Casualty Co.*, 135 Mich. 189, 193, 97 N. W. 686, 688. In the former, garnishment is impossible, because of the general statutory rule that contingent liabilities are not subject to garnishment. *Grimsrud* v. *Linley*, 109 Wis. 632, 634, 85 N. W. 410, 411. In the latter, garnishment is allowed, as the indebtedness is absolute. *Hoven* v. *Employers' Liability Assurance Corporation*, 93 Wis. 201, 67 N. W. 46. The question, then, is purely one of classification, and in many cases is not difficult. *Anoka Lumber Co.* v. *Fidelity & Casualty Co.*, 63 Minn. 286, 65 N. W. 353; *Fenton* v. *Fidelity & Casualty Co.*, 36 Or. 283, 56 Pac. 1096. The majority of the cases have held policies like that in the principal case to be contracts of indemnity. *Allen* v. *Ætna Life Ins. Co.*, 145 Fed. 881; *Frye* v. *Bath Gas & Electric Co.*, 97 Me. 241, 54 Atl. 395. *Contra*, *Sanders* v. *Frankfort Marine, etc. Ins. Co.*, 72 N. H. 485, 57 Atl. 655. *Cf.* *Blackstone* v. *Alemannia Fire Ins. Co.*, 56 N. Y. 104; *In re Eddystone Marine Ins. Co.*, [1892] 2 Ch. 423. In the principal case there are many provisions which already insure against liability, and the proviso in terms applies to some of these. In such a case of ambiguity it would seem that the intention of the parties would be best carried out by construing the policy against the insurer. See *Kratzenstein* v. *Western Assurance Co.*, 116 N. Y. 54, 59, 22 N. E. 221, 223. This is the more reasonable since the proviso seems to be directed at the fraudulent payment by the insured of pretended claims, and can be made effective by confining it to cases where the company has not conducted the